

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JEHAN ZEB MIR,

Plaintiff,

vs.

MEDICAL BOARD OF  
CALIFORNIA, et al.,

Defendant.

CASE NO. 12cv2340-GPC-DHB

**ORDER DENYING PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION AND GRANTING  
DEFENDANT'S REQUEST FOR  
JUDICIAL NOTICE**

[DKT. NOS. 17-18]

For the reasons below, the Court **DENIES** Plaintiff's motion for a preliminary injunction and **GRANTS** Defendant's request for judicial notice. (Dkt. Nos. 17-18.)

**BACKGROUND**

On September 25, 2012, Plaintiff Jehan Zeb Mir (hereinafter "Plaintiff"), proceeding in propria persona, filed this lawsuit in federal court alleging that the California Medical Board wrongfully took disciplinary actions against Plaintiff's physician's and surgeon's certificate. (Dkt. No. 1.) On January 17, 2013, Plaintiff filed a first amended complaint seeking injunctive and declaratory relief. (Dkt. No. 8.) On February 13, 2013, Defendants filed a motion to dismiss Plaintiff's amended complaint. (Dkt. No. 13.) On February 20, 2013, Plaintiff filed a motion for preliminary injunction. (Dkt. No. 17.) On March 5, 2013, Defendants filed an opposition to Plaintiff's motion for preliminary injunction, which included a request

1 for judicial notice. (Dkt. No. 18.) As the motion to dismiss has not been fully  
 2 briefed, the only issue before the Court is Plaintiff's motion for preliminary  
 3 injunction.

4       This case follows a litany of lawsuits filed by the Plaintiff in an attempt to  
 5 reverse the California Medical Board's decision to revoke Plaintiff's medical  
 6 licenses. In his first amended complaint, Plaintiff provides a complicated history of  
 7 his treatment for one particular patient, which ultimately resulted in his termination  
 8 from Pomona Valley Hospital and numerous review proceedings before the  
 9 California Medical Board. (Dkt. No. 8.) Plaintiff's complaint provides further  
 10 background as to the state court proceedings in which he contested the California  
 11 Medical Board's decision to revoke his licenses. (Id.)

12       Plaintiff was licensed by the Defendant State of California in 1972 to practice  
 13 medicine. (Plaintiff's First Amended Complaint (hereinafter, "FAC", ¶ 6).) On June  
 14 8, 2000, Plaintiff treated an 81-year old female patient with a history of medical  
 15 complications at Pomona Valley Hospital, where he was a provisional member of  
 16 the medical staff. (FAC ¶¶ 6, 11, 12.) Plaintiff performed a series of surgeries on  
 17 the patient, leading up to an above-the-knee amputation of the patient's leg due to  
 18 gangrene. (FAC ¶¶ 30, 33-34, 42-45, 48-49.) Related to Plaintiff's mistreatment of  
 19 the patient and other concerns about the Plaintiff's performance as a provisional  
 20 staff member, Pomona Valley Hospital ("PVH") terminated Plaintiff around  
 21 November 2000. (FAC ¶¶ 59-63.)

22       Plaintiff has a history of filing lawsuits resulting in unfavorable  
 23 determinations and Court-ordered sanctions against Plaintiff. Plaintiff sued PVH  
 24 twice for injunctive relief and damages. The Superior Court denied relief on both  
 25 occasions, and the Court of Appeals affirmed the decision and determined Plaintiff  
 26 was a vexatious litigant. (FAC ¶¶ 57, 59; Defendant's Request for Judicial Notice,  
 27 Exhibit B, Mir v. Pomona Valley Hosp. Medical Center, 2003WL 403301, \*2-\*6  
 28 (Cal. App. Feb. 24, 2003).) The Court of Appeal even observed that Plaintiff had a

1 long history of filing and maintaining frivolous and harassing litigation, including  
 2 in a previous case where the Ninth Circuit affirmed a sanctions award for Plaintiff's  
 3 frivolous filings in litigating a hospital's denial of staff privileges for over nine  
 4 years. (*Id.* at \*20-\*21; see also Mir v. Little Company of Mary Hospital, 844 F.2d  
 5 646, 653 (9<sup>th</sup> Cir. 1988)).

6       In this action, Plaintiff seeks injunctive and declaratory relief from the  
 7 California Medical Board's decision to revoke Plaintiff's medical license. The  
 8 Medical Board's actions commenced in 2003, when they first charged Plaintiff with  
 9 gross negligence and incompetence in connection with his care of the  
 10 aforementioned PVH patient. In January 2007, the Medical Board issued a decision  
 11 revoking Plaintiff's medical license. (FAC ¶163.) Following this determination,  
 12 Plaintiff filed a writ of mandamus with the California Superior Court, which granted  
 13 the petition and remanded the matter to the Medical Board for reconsideration of the  
 14 penalty issue. (FAC ¶¶ 163-164, 175.) Plaintiff also filed a petition for writ relief  
 15 with the Court of Appeal, which was denied. (FAC ¶ 177.) After a lengthy appeal  
 16 process, reconsideration by the Medical Board, and specified terms for a period of  
 17 probation, the Medical Board issued its final decision revoking Plaintiff's medical  
 18 license in August 2012 for failure to comply with the conditions of his probation.  
 19 (FAC ¶¶ 191, 198-200, 202-209, 223-227.)

20       Plaintiff's motion for a preliminary injunction largely asserts the same factual  
 21 allegations as the first amended complaint. (Dkt. No. 17.) Plaintiff claims that the  
 22 Court should dismiss the Medical Board's 2003 charges for several reasons: first,  
 23 the Medical Board allegedly failed to follow the Superior Court's order; second,  
 24 Plaintiff asserts that the right to practice medicine is a constitutionally protected  
 25 right; third, Plaintiff alleges he was denied due process and that the Medical Board  
 26 discriminated against him as a member of a minority group; finally, Plaintiff claims  
 27 that he will suffer irreparable harm without an injunction. (*Id.*) Throughout these  
 28 claims, Plaintiff asserts a series of factual allegations regarding the Medical Board's

1 reliance on false testimony and inaccurate information to make it's determination.

2 **LEGAL STANDARD**

3 To obtain a preliminary injunction, the moving party must show: (1) a  
 4 likelihood of success on the merits; (2) a likelihood of irreparable harm to the  
 5 moving party in the absence of preliminary relief; (3) that the balance of equities  
 6 tips in the moving party's favor; and (4) that an injunction is in the public interest.  
 7 Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Under the Ninth  
 8 Circuit's "sliding scale" approach, the first and third elements are to be balanced  
 9 such that "serious questions" going to the merits and a balance of hardships that  
 10 "tips sharply" in favor of the movant are sufficient for relief so long as the other two  
 11 elements are also met. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127,  
 12 1134–35 (9th Cir. 2011). A preliminary injunction is "an extraordinary remedy that  
 13 may only be awarded upon a clear showing that the plaintiff is entitled to such  
 14 relief," Winter, 555 U.S. at 22, and the moving party bears the burden of meeting all  
 15 four Winter prongs. See Cottrell, 632 F.3d at 1135; DISH Network Corp. v. FCC,  
 16 653 F.3d 771, 776–77 (9th Cir. 2011).

17 Furthermore, the Supreme Court and the Ninth Circuit have stressed that  
 18 district courts must be sensitive to concerns of equity, federalism, and comity when  
 19 considering injunctive relief against State agencies. Rizzo v. Good, 423 U.S. 362,  
 20 375 (1976); Thomas v. County of Los Angeles, 978 F.2d 504, 508 (9<sup>th</sup> Cir. 1992).  
 21 A strong factual record is necessary before a federal district court may enjoin a State  
 22 agency. Thomas, 978 F.2d at 508. The Ninth Circuit requires a showing of  
 23 pervasive and intentional misconduct before a district court may enjoin a State  
 24 agency. Id.

25 **DISCUSSION**

26 Plaintiff has failed to provide sufficient support for the Winter factors, and  
 27 therefore cannot succeed on a claim for preliminary injunction. As a preliminary  
 28 matter, Plaintiff does not allege any comprehensible facts to support three of the

1 four Winter elements. Plaintiff's motion includes confusing assertions that  
2 mix law and facts, and he spends much effort arguing in support of this Court's  
3 jurisdiction over his claim. As to the first Winter factor, the Court is unable to parse  
4 out any facts that indicate Plaintiff will succeed on the merits of the complaint. The  
5 assertions that Plaintiff does provide are conclusory and fail to provide any insight  
6 into the decisions made by the California Medical Board. Moreover, Plaintiff relies  
7 on previous state court decisions in cases which he filed a writ of mandamus to  
8 contest the California Medical Board's determination. Upon review of the  
9 California Court of Appeals decisions affirming the Superior Court rulings, this  
10 Court finds that, at best, Plaintiff misinterprets the state court decisions. At worst,  
11 the previous decisions indicate that this claim reflects Plaintiff's frivolous attempt  
12 to re-litigate the same set of issues that have been fully adjudicated before the  
13 California courts and exhausted through the administrative process before the  
14 California Medical Board.

15 Having reviewed the motion and supporting exhibits, the Court finds that  
16 Plaintiff failed to plead any facts that support three Winter factors. The Court finds  
17 there is little likelihood of success on the merits of Plaintiff's claims, especially as it  
18 appears that the same issues have already been adjudicated through state court  
19 proceedings. A balance of the equities tips does not tip in Plaintiff's favor, as  
20 Plaintiff has exhausted both judicial and administrative remedies regarding this  
21 matter. Finally, Plaintiff has not pled any facts to indicate that injunctive relief  
22 would be in the public interest.

23 Plaintiff asserts that he will suffer irreparable injury if preliminary injunctive  
24 relief is not granted. Plaintiff claims that the Court must "prevent future wrongs of  
25 Defendants," and that "Defendants are discriminating members of the minority  
26 group which includes plaintiff in targeting for discipline and imposing  
27 disproportionately harshest penalties." (Dkt. No. 17 at 24.) Plaintiff further claims  
28 that "depravation of constitutional rights is irreparable injury." The Court finds that

1 this potential harm is nothing more than mere speculation, and reassertion of facts  
 2 of an alleged past harm. Therefore, Plaintiff has failed to demonstrate an  
 3 “immediate threatened harm.” Caribbean Marine Services Co., Inc. v. Baldridge, 844  
 4 F.2d 668, 674 (9<sup>th</sup> Cir. 1988). “Past exposure to illegal conduct does not in itself  
 5 show a present case or controversy regarding injunctive relief.” City of Los  
 6 Angeles v. Lyons, 461 U.S. 95, 102 (1983). Plaintiff has failed to establish  
 7 irreparable harm, and does not meet the additional Winter factor required to support  
 8 a claim for a preliminary injunction. As such, Plaintiff has failed to meet the  
 9 required burden and the Court therefore **DENIES** Plaintiff’s motion for a  
 10 preliminary injunction.

11 **Request for Judicial Notice**

12 A court must take judicial notice if a party requests it and supplies the court  
 13 with the requisite information. Fed. R. Evid. 201(d). “A judicially noticed fact must  
 14 be one not subject to reasonable dispute in that it is either (1) generally known  
 15 within the territorial jurisdiction of the trial court or (2) capable of accurate and  
 16 ready determination by resort to sources whose accuracy cannot reasonably be  
 17 questioned.” Fed. R. Evid. 201(b). A district court may take judicial notice of  
 18 unpublished decisions and court records. See Wendt v. Smith, 273 F. Supp. 2d  
 19 1078, 1082 (C.D. Cal. 2003); MGIC Indem. Corp. V. Weisman, 803 F.2d 500, 504  
 20 (9<sup>th</sup> Cir. 1986); United States v. Black, 482 F.2d 1035, 1041 (9<sup>th</sup> Cir. 2007).

21 Defendants request that the Court take judicial notice pursuant to Federal Rule of  
 22 Evidence 201 of a similar complaint filed by the Plaintiff in the U.S. District Court,  
 23 Central District of California. Defendants also ask the Court to take judicial notice  
 24 of two California Appellate Court decisions rendered in a case filed by the Plaintiff  
 25 also regarding similar, if not the same, allegations. Having reviewed, the Court  
 26 **GRANTS** Defendants’ request.

27 **CONCLUSION**

28 Based on the foregoing, the Court **DENIES** Plaintiff’s motion for a

1 preliminary injunction and **GRANTS** Defendants' request for judicial notice.  
2 Accordingly, the Court hereby **VACATES** the hearing set for this matter scheduled  
3 on Friday, March 22, 2013.

4 **IT IS SO ORDERED.**

5

6 DATED: March 19, 2013

7   
8 HON. GONZALO P. CURIEL  
United States District Judge

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28